

AO 120 (Rev. 08/10)

<p>AO 120 (Rev. 08/10)</p> <p>TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450</p>	<p>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</p>
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Trademarks or Patents. (the patent action involves 35 U.S.C. § 292.)

DOCKET NO. 2:11-cv-00022-TJW	DATE FILED 1/20/2011	U.S. DISTRICT COURT Eastern District of Texas, Marshall Division
PLAINTIFF Main Hastings LLC		DEFENDANT JPMorgan Chase & Co.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,581,707	10/1/1996	Ronald A. Katz Technology Licensing L.P.
2 5,828,734	10/27/1998	Ronald A. Katz Technology Licensing L.P.
3 5,684,863	11/4/1997	Ronald A. Katz Technology Licensing L.P.
4 5,815,551	9/29/1998	Ronald A. Katz Technology Licensing L.P.
5 5,974,120	10/26/1999	Ronald A. Katz Technology Licensing L.P.

In the above-entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED 3/4/2011	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input checked="" type="checkbox"/> Other Pleading			
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK		
1 5,917,883	6/29/1999	Ronald A. Katz Technology Licensing L.P.		
2 5,898,762	4/27/1999	Ronald A. Katz Technology Licensing L.P.		
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

42. As noted above in paragraph 20, the '734 Patent is expired. Because the '734 Patent is expired, any product or method once covered by the claims of the '734 Patent is no longer protected by the patent laws of the United States. When the '734 Patent expired, its formerly protected property entered the public domain.

43. Despite the fact that the claims of the '734 Patent are no longer afforded patent protection, Defendant has and continue to mark (or cause to be marked) various products, including its Chase banking and e-commerce website, with the '734 Patent.

44. Despite its knowledge of patent law and the current status of the '734 Patent, Defendant has and continue to falsely mark (or cause to be marked) its products as being covered by the '734 Patent. Defendant knew or reasonably should have known that marking its products with the '734 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

45. Defendant intended to and has deceived the public by falsely marking (or causing to be marked) the patent protection status of its products.

46. Defendant has violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of its Chase banking and e-commerce website with the '734 Patent.

COUNT 3: THE '863 PATENT

47. The Plaintiff incorporates and restates the allegations of Paragraphs 1-34.

48. As noted above in paragraph 21, the '863 Patent is expired. Because the '863 Patent is expired, any product or method once covered by the claims of the '863 Patent is no longer protected by the patent laws of the United States. When the '863 Patent expired, its formerly protected property entered the public domain.

49. Despite the fact that the claims of the '863 Patent are no longer afforded patent protection, Defendant has and continue to mark (or cause to be marked) various products, including its Chase banking and e-commerce website, with the '863 Patent.

50. Despite its knowledge of patent law and the current status of the '863 Patent, Defendant has and continue to falsely mark (or cause to be marked) its products as being covered by the '863 Patent. Defendant knew or reasonably should have known that marking its products with the '863 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

51. Defendant intended to and has deceived the public by falsely marking (or causing to be marked) the patent protection status of its products.

52. Defendant has violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of its Chase banking and e-commerce website with the '863 Patent.

COUNT 4: THE '551 PATENT

53. The Plaintiff incorporates and restates the allegations of Paragraphs 1-34.

54. As noted above in paragraph 22, the '551 Patent is expired. Because the '551 Patent is expired, any product once covered by the '551 Patent is no longer protected by the patent laws of the United States. When the '551 Patent expired, its formerly protected property entered the public domain.

55. Despite the fact the '551 Patent is no longer in force, Defendant has and continue to mark (or cause to be marked) various products, including its Chase banking and e-commerce website, with the '551 Patent.

56. Despite its knowledge of patent law and the current status of the '551 Patent,

Defendant has and continue to falsely mark (or cause to be marked) its products as being covered by the '551 Patent. Defendant knew or reasonably should have known that marking its products with the '551 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

57. Defendant intended to and has deceived the public by falsely marking (or causing to be marked) the patent protection status of its products.

58. Defendant has violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of its Chase banking and e-commerce website with the '551 Patent.

COUNT 5: THE '120 PATENT

59. The Plaintiff incorporates and restates the allegations of Paragraphs 1-34.

60. As noted above in paragraph 23, the '120 Patent is expired. Because the '120 Patent is expired, any product or method once covered by the claims of the '120 Patent is no longer protected by the patent laws of the United States. When the '120 Patent expired, its formerly protected property entered the public domain.

61. Despite the fact that the claims of the '120 Patent are no longer afforded patent protection, Defendant has and continue to mark (or cause to be marked) various products, including its Chase banking and e-commerce website, with the '120 Patent.

62. Despite its knowledge of patent law and the current status of the '120 Patent, Defendant has and continue to falsely mark (or cause to be marked) its products as being covered by the '120 Patent. Defendant knew or reasonably should have known that marking its products with the '120 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented"

article.

63. Defendant intended to and has deceived the public by falsely marking (or causing to be marked) the patent protection status of its products.

64. Defendant has violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of its Chase banking and e-commerce website with the ‘120 Patent.

COUNT 6: THE ‘893 PATENT

65. The Plaintiff incorporates and restates the allegations of Paragraphs 1-34.

66. As noted above in paragraph 24, the ‘893 Patent is expired. Because the ‘893 Patent is expired, any product once covered by the ‘893 Patent is no longer protected by the patent laws of the United States. When the ‘893 Patent expired, its formerly protected property entered the public domain.

67. Despite the fact the ‘893 Patent is no longer in force, Defendant has and continue to mark (or cause to be marked) various products, including its Chase banking and e-commerce website, with the ‘893 Patent.

68. Despite its knowledge of patent law and the current status of the ‘893 Patent, Defendant has and continue to falsely mark (or cause to be marked) its products as being covered by the ‘893 Patent. Defendant knew or reasonably should have known that marking its products with the ‘893 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a “patented” article.

69. Defendant intended to and has deceived the public by falsely marking (or causing to be marked) the patent protection status of its products.

70. Defendant has violated 35 U.S.C. §292(a) by marking (or causing to be marked),

with intent to deceive the public, pages of its Chase banking and e-commerce website with the '893 Patent.

COUNT 7: THE '762 PATENT

71. The Plaintiff incorporates and restates the allegations of Paragraphs 1-34.

72. As noted above in paragraph 25, the '762 Patent is expired. Because the '762 Patent is expired, any product once covered by the '762 Patent is no longer protected by the patent laws of the United States. When the '762 Patent expired, its formerly protected property entered the public domain.

73. Despite the fact the '762 Patent is no longer in force, Defendant has and continue to mark (or cause to be marked) various products, including its Chase banking and e-commerce website, with the '762 Patent.

74. Despite its knowledge of patent law and the current status of the '762 Patent, Defendant has and continue to falsely mark (or cause to be marked) its products as being covered by the '762 Patent. Defendant knew or reasonably should have known that marking its products with the '762 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

75. Defendant intended to and has deceived the public by falsely marking (or causing to be marked) the patent protection status of its products.

76. Defendant has violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of its Chase banking and e-commerce website with the '762 Patent.

DAMAGES

77. The Plaintiff incorporates and restates the allegations of Paragraphs 1-76.

78. Upon information and belief, Defendant knows, or reasonably should know, that marking its products with false patent statements was and is illegal under Title 35 of the United States Code.

79. Each falsely marked product is a separate "offense" pursuant to 35 U.S.C. §292(a).

PRAYER FOR RELIEF

80. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant as follows:

81. A decree that Defendant has falsely marked products in violation of 35 U.S.C. § 292;

82. An award of monetary damages, pursuant to 35 U.S.C. § 292, in the form of a civil monetary fine of \$500 per false marking "offense," or an alternative amount as determined by the Court, one half of which should be paid to the United States of America and one-half of which shall be paid to Main Hastings;

83. An accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products;

84. Enter a judgment and order requiring Defendant to pay Main Hastings prejudgment and post-judgment interest on the damages awarded;

85. Order Defendant to pay Main Hastings' costs and attorney fees; and

86. Grant Main Hastings such other and further relief as it may deem just and equitable.

DEMAND FOR JURY TRIAL

87. Pursuant to Federal Rules of Civil Procedure Rule 38, Plaintiff hereby demands a jury trial on all issues triable by jury.

Dated: January 20, 2011

Respectfully submitted,

/s/ Winston O. Huff

Winston O. Huff, Attorney in Charge
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ATTORNEYS FOR PLAINTIFF
MAIN HASTINGS, LLC

CERTIFICATE OF FILING

I hereby certify that on January 20, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

Respectfully submitted,

By: /s/ Winston O. Huff

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CERTIFICATE OF SERVICE

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 20th day of January, 2011.

/s/ Winston O. Huff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MAIN HASTINGS LLC, §
§
Plaintiff, §
§
§ Civil Action No.
v. §
§ Jury Trial Demanded
JPMORGAN CHASE & CO. §
§
Defendant. §

COMPLAINT FOR FALSE PATENT MARKING

Plaintiff Main Hastings LLC, ("Main Hastings"), by its attorneys, hereby complains against Defendant JPMorgan Chase & Co. ("JP Morgan Chase" or "Chase") and alleges as follows:

NATURE OF THE CASE

1. This is a *qui tam* action on behalf of the public for false patent marking under 35 U.S.C. §292.

2. As set forth below, Defendant has violated 35 U.S.C. §292(a), by marking certain of its products with the purpose of deceiving the public. More specifically, Defendant has, with the purpose of deceiving the public, marked products with patents that have expired and, therefore, do not and cannot cover the marked products.

3. The false marking statute exists to give the public notice of patent rights. Congress intended the public to rely on marking as a ready means of discerning the status of intellectual property embodied in an article of manufacture or design. Federal patent policy recognizes an important public interest in permitting full and free competition in the use of ideas that are, in reality, a part of the public domain.

4. False patent marking – including representing through advertisement that a product is covered by a patent that has expired – is a serious problem. Acts of false marking deter innovation and stifle competition in the marketplace. If an article that is within the public domain is falsely marked, potential competitors may be dissuaded from entering the same market. False marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement. False marking can cause unnecessary investment in design around or costs incurred to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete. Furthermore, false marking misleads the public into believing that a patentee controls the article in question (as well as like articles), externalizes the risk of error in the determination, placing it on the public rather than the manufacturer or seller of the article, and increases the cost to the public of ascertaining whether a patentee in fact controls the intellectual property embodied in an article. In each instance where it is represented that an article is patented, a member of the public desiring to participate in the market for the marked article must incur the cost of determining whether the involved patents are valid and enforceable. Failure to take on the costs of a reasonably competent search for information necessary to interpret each patent, investigation into prior art and other information bearing on the quality of the patents, and analysis thereof can result in a finding of willful infringement, which may treble the damages an infringer would otherwise have to pay. False markings may also create a misleading impression that the falsely marked product is technologically superior to previously available ones, as articles bearing the term “patent” may be presumed to be novel, useful, and innovative.

5. The false marking statute explicitly permits *qui tam* actions. By permitting members of the public to sue on behalf of the government, Congress allowed individuals to

help control false marking.

6. Main Hastings, on its own behalf and on behalf of the United States, seeks an award of monetary damages of not more than \$500 for each of Defendant's violations of 35 U.S.C. § 292(a), one-half of which shall be paid to the United States pursuant to 35 U.S.C. § 292(b).

THE PARTIES

7. Main Hastings is a Texas limited liability company.

8. Defendant is a corporation established under the laws of the State of Delaware with its principal place of business at 270 Park Avenue, New York, NY 10017. Defendant can be served through its registered agent at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

9. Defendant regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units.

JURISDICTION AND VENUE

10. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

11. This Court has personal jurisdiction over the Defendant. The Defendant has conducted and does conduct business within the State of Texas. Defendant, directly or through subsidiaries or intermediaries, offers for sale, sell, mark and/or advertise the products that are the subject of this Complaint in the United States, the State of Texas, and the Eastern District of Texas.

12. Defendant has voluntarily sold the products that are the subject of this Complaint in this District, either directly to customers in this District or through intermediaries with the

expectation that the products will be sold and distributed to customers in this District. These products have been and continue to be purchased and used by consumers in the Eastern District of Texas. Defendant has committed acts of false marking within the State of Texas and, more particularly, within the Eastern District of Texas.

13. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because (i) Defendant's products that are the subject matter of this cause of action are advertised, marked, offered for sale, and/or sold in various retail stores and/or on the Internet in this District; (ii) a substantial part of the events or omissions giving rise to the claim occurred in this District; and (iii) Defendant is subject to personal jurisdiction in this District, as described above.

14. Main Hastings brings this action under 35 U.S.C. §292(b), which provides that any person may sue for civil monetary penalties for false patent marking.

DEFENDANT'S FALSELY MARKED PRODUCTS AND PATENTS

A. CHASE BANKING AND E-COMMERCE WEBSITE

15. Defendant operates and controls the Chase banking and e-commerce website. In this Complaint, Defendant's "products" means and includes, collectively, the Chase banking and e-commerce website and all parts thereof, any and all information or services offered or rendered through the Chase banking and e-commerce website, any and all products offered for sale or advertised through the Chase banking and e-commerce website and/or any and all other uses and features of the Chase banking and e-commerce website.

16. Figure 1 depicted below shows an image of the Defendant's banking and e-commerce website:



17. For a period of time, the Defendant's banking and e-commerce website has listed, among others, U.S. Patent No. 5,561,707 ("the '707 Patent"), U.S. Patent No. 5,828,734 ("the '734 Patent"), U.S. Patent No. 5,684,863 ("the '863 Patent"), U.S. Patent No. 5,815,551 ("the '551 Patent"), U.S. Patent No. 5,974,120 ("the '120 Patent"), U.S. Patent No. 5,917,893 ("the '893 Patent"), and U.S. Patent No. 5,898,762 ("the '762 Patent").

18. Figure 2 below shows a copy of the Defendant's banking and e-commerce website listing the '707 Patent, the '734 Patent, the '863 Patent, the '551 Patent, the '120 Patent, the '893 Patent, and the '762 Patent. Further, attached as Exhibits A-G are true and correct copies of the '707 Patent, the '734 Patent, the '863 Patent, the '551 Patent, the '120 Patent, the '893 Patent, and the '762 Patent.

Patent Notice
JP Morgan Chase Bank, N.A. is licensed under the following, and related Ronald A. Katz Technology Licensing, L.P. United States Patents: 5,561,707; 5,828,734; 5,684,863; 5,815,551; 5,974,120; 5,917,893; 5,898,762; and others.
JP Morgan Chase is licensed under U.S. Patent Numbers 5,910,988 and 6,032,137

Figure 2 – Picture of Defendant's Website Displaying the '707 Patent, the '734 Patent, the '863 Patent, the '551 Patent, the '120 Patent, the '893 Patent, and the '762 Patent.

19. The '707 Patent, entitled "Telephonic-interface statistical analysis system," was filed on October 18, 1993, and issued on October 1, 1996. The '707 Patent expired December

20, 2005 due to term being disclaimed to term of US Pat. No. 5,255,309.

20. The '734 Patent, entitled "Telephone interface call processing system with call selectivity," was filed on October 4, 1993, and issued on October 27, 1998. The '734 Patent expired October 5, 2010 due to patent term disclaimer as provided and evidenced on the face of the patent.

21. The '863 Patent, entitled "Telephonic-interface statistical analysis system," was filed on June 7, 1995, and issued on November 4, 1997. The '863 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

22. The '551 Patent, entitled "Telephonic-interface statistical analysis system," was filed on June 7, 1995, and issued on September 29, 1998. The '551 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

23. The '120 Patent, entitled "Telephone interface call processing system with call selectivity," was filed on June 7, 1995, and issued on October 26, 1999. The '120 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

24. The '893 Patent, entitled "Multiple format telephonic interface control system," was filed on June 7, 1995, and issued on June 29, 1999. The '893 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

25. The '762 Patent, entitled "Telephonic-interface statistical analysis system," was filed on June 6, 1995, and issued on April 27, 1999. The '762 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

CAUSES OF ACTION FOR FALSE PATENT MARKING

26. Main Hastings incorporates by reference the foregoing paragraphs as if fully set forth herein.

27. Defendant is a sophisticated company with years of experience applying for,

obtaining, and/or litigating patents, and therefore knows that patents do not have unlimited scope, but rather, have a scope limited to that which is claimed, and that all patents expire and that all monopoly rights in a patent terminate irrevocably when it expires.

28. Defendant has or regularly retains, sophisticated legal counsel.
29. Each false marking on the products identified in this Complaint is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.
30. Defendant's false marking of its products has wrongfully quelled competition with respect to such products thereby causing harm to Main Hastings, the United States, and the public.
31. Defendant has wrongfully and illegally advertised patent monopolies that it does not possess and, as a result, has benefited by maintaining a substantial market share with respect to the products referenced in this Complaint.
32. Defendant knows that patents provide the patent holder extreme market power to monopolize the invention.
33. Defendant knows that all patents expire and that all monopoly rights in a patent terminate irrevocably when it expires.
34. As set forth in detail herein, and/or for other reasons that will be later evidenced, Defendant has falsely marked the products described below, with the intent to deceive the public, in violation of 35 U.S.C. §292. Despite the easily modifiable digital format of the Defendant's banking and e-commerce website and one or more revisions to such website since the expiration of the subject patents as evidenced by the updated 2011 copyright notice date on such website, Defendant has nevertheless knowingly and repeatedly

used and continues to use the expired patents in marking, offering for sale and/or advertising its products, with intent to deceive the public.

COUNTS 1-7: FALSE MARKING ON DEFENDANT'S PRODUCTS

COUNT 1: THE '707 PATENT

35. The Plaintiff incorporates and restates the allegations of Paragraphs 1-34.

36. As noted above in paragraph 19, the '707 Patent is expired. Because the '707 Patent is expired, any product once covered by the '707 Patent is no longer protected by the patent laws of the United States. When the '707 Patent expired, its formerly protected property entered the public domain.

37. Despite the fact the '707 Patent is no longer in force, Defendant has and continues to mark (or cause to be marked) various products, including its Chase banking and e-commerce website, with the '707 Patent.

38. Despite its knowledge of patent law and the current status of the '707 Patent, Defendant has and continue to falsely mark (or cause to be marked) its products as being covered by the '707 Patent. Defendant knew or reasonably should have known that marking its products with the '707 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

39. Defendant intended to and has deceived the public by falsely marking (or causing to be marked) the patent protection status of its products.

40. Defendant has violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of its Chase banking and e-commerce website.

COUNT 2: THE '734 PATENT

41. The Plaintiff incorporates and restates the allegations of Paragraphs 1-34.